

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 56 of 1992

with

CRIMINAL APPEAL No 85 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 : No

MANILAL NAGARDAS PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 56 of 1992
MR AD SHAH for Petitioner
Mr.S.T.Mehta, ld.ADDL.PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal AppealNo 85 of 1992
MR MC BAROT for Petitioner
Mr.S.T.Mehta, Ld.ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 05/09/97

ORAL JUDGEMENT

Both these appeals arise out of an order of conviction that came to be passed against both the accused in Sessions Case No.78 of 1989. The learned Judge by his order dated 25-10-1991 has convicted both the accused for offence under Sec.161 of the Indian Penal Code and Sec.5(1) (d) (ii) of the Prevention of Corruption Act, 1947. On the date of the incident, the old Act was in force.

2. The incident occurred on 6-2-1988. A general complaint was received by Anti-Corruption Bureau of the State more particularly in Ahmedabad that at different Octroi Check-posts of the Municipal Corporation of the City of Ahmedabad, Octroi staff is in the habit of collecting extra money from driver etc. of vehicles for entry to the city limit on the pretext of getting their case cleared earlier.

3. With this position in mind, the ACB staff proceeded to lay a trap in the instant case at Chilloda Check-post. This is confirmed by the Investigating Officer Shri Yadav in his deposition at page 151 of p.w.2, Exh.17. Of the several check-posts, they decided to go to that post in a passenger metador bearing registration No.GBN 338. They reached the place and waited there for a vehicle to enter the city limit.

4. At Chilloda, they did not get any vehicle and therefore, via a road leading to Mahodi they reached the outskirts of Dehgam and waited there. Finally, a public carrier Metador bearing No.GTJ 7985 approached the checkpost which was intercepted by the members of the staff of ACB. It was carrying 125 tins of vegetable ghee. The name of the driver was Firozkhan Sherkhan Pathan and he was to carry it to Umreth. He was to pass through the City of Ahmedabad and in his case there was no question of paying octroi except to obtain a transit pass. The arrangement of transit pass is that, if a vehicle is not to bring any goods within the city limits, but is to pass through the city carrying the goods, then at the place of entry, it will be given a transit pass referred to as M-pass, which will be handed over at the point of exit. M-pass is given in duplicate, one copy of which is to be handed over at the exit point. The said driver Firozkhan was explained the entire procedure by the DCB Staff, particularly Mr.Yadav and he was told that whatever be the regular fee for the transit pass may be paid by him and if there is any demand in excess of it by way of bribe that also he should give in presence of the

panch. Currency Notes treated with Anthracene powder were kept in the pocket of one of the panchas. The said driver Firoz was to obtain these treated currency notes from panch no.1 and hand it over to the staff of the check-post as and when demanded. Accordingly, the trap was laid. According to the prosecution, over and above the sum of Rs.5/-, extra amount of Rs.2/- was demanded.

5. Out of the said treated currency notes, two currency notes of the denomination of Rs.10/- each was taken by Firoz from said Panch no.1 and handed over to one of the accused. He took it and returned a sum of Rs.3/- in form of currency note of Rs.2/- and a coin of rupee one. Thereafter, the prearranged signal was given and the trap was sprung.

6. Under the circumstances, it is not surprising that anthracene powder was found on accused no.1. So far as accused no.2 is concerned, the case of the prosecution is that he prepared the transit pass and as to the payment of money, he directed the said driver to hand it over to accused no.1, and that is how, accused no.1 came to receive the currency notes. It would, therefore, mean that accused no.1 and accused no.2 were carrying on this venture jointly for mutual benefit.

7. So far as defence is concerned, the fact of additional sum of Rs.2/- having been received is accepted. It is sought to explain away by saying that for transit pass form No.1 has to be filled in by the driver and if he is not able to fill up or he has not come with the form, they being usually at the checkpoint and being aware of this problem were keeping blank forms brought by themselves from their own money, fill it up for and on behalf of the driver, get it signed and for this extra service, they were charging Rs.2/- and that is how, this extra money according to them was taken in case of driver Firozkhan. The question, therefore is not as to whether extra money is taken. The question is whether the money so taken amounts to an offence or not?

8. For proving its case, driver Firozkhan is not examined by the prosecution. So far as the witnesses are concerned, only depositions of two important witnesses are required to be considered i.e. witness No.1 (Exh.11) and P.W.2 Exh.17. P.W.1 deposes at page 79 and in keeping with the aforesaid explanation and the stand of the defence, he has been put questions about the form being filled up. This material part of the cross examination is to be found in para 6 at page 101. He does not remember whether any form was to be filled in by

the driver for obtaining the transit pass. He does not remember whether any such filled up form was asked from the driver-accused no.2 or not. He does not remember whether Firoz had any form dulyfilled up, nor does he remeber that of the 2 accused, accused no.2 had told lthe driver that he would fill up the form and would charge Rs.2/- . He does not remeber whether "L" form, in fact, was filled up and Firoz had signed the same. The witness also does not remember whether this form was seized by the I.O. or not?

9. In absence of Firoz, the other witnesses, who could have said about this is only panch no.1. In all trap cases, panch no.1 is supposed to accompany the complainant and be a witness to all that he is said and that is done. It is not his case that no such talk has transpired, nor does he deny the suggestions made on behalf of the defence as to the filling up of the form and demand of money for extra services rendered. Replies are that he does not remember. So far as Mr.Jadav is concernd, his attention is drawn to the form. He says in para 4 during cross-examination at page 169 that he had seen "L" form at the spot where the incident occurred. He had also seen these forms and that they were filled up. He also admits that there were these L forms of the respective parties. He denies the suggestion that Mr.Keshavlal Chavda, a witness, had said before him that these forms like L-forms are not being supplied by the Corporation. But they are to be brought by the concerned party. However, the witness does admit that if the party has not brought in the form, the Clerk does fill up it.

10. So far as the said statement attributed to the witness Mr.Chavda is concerned, it could not have gone into evidence in absence of witness himself being examined. It will otherwise be hit by Sec.162 Cr.P.C. The answer of Mr.Yadav, the Investigating Officer on that score therefore, is not required to be considered. What remains, therefore, in his deposition with reference to the form is that there were L-forms duly filled in and signed and that the forms are to be brought by the parties. In this background, if, in fact, the forms were filled in and as explained by the accused, it was the accused who did it and accused no.2, therefore, told Firoz that he has to pay Rs.2/- for this service and when the charging of extra amount and receipt thereof admitted and expained in this manner is the position on record, as stated above, the question is whether it amounts to an offence.

11. LAPP Mr.Mehta, on reading the depositon of said

panch-witness as well as that of the Investigating Officer submitted that what was gathered by way of information as extra money being charged is definitely established. It is also established that there was surplus almost of Rs.193/- in the cash box. The solitary instance of Firoz was the proverbial tip of the ice-burg as this was the rule, rather than an exception, but for which, there would not be so much of excess cash. About the cash also, there is an explanation given in the written submission made on behalf of the accused page 211 para 8 that he has received his salary, of which, he was in need of currency notes of the denomination of Rs.2/- and for that he had offered Rs.200/- in form of currency notes of Rs.100/-. However, the arrangement worked out was that the said amount be deposited along with the advance cash and the accused himself may get currency notes of the denomination of Rs.2/- each from the amount collected and this is not merely a suggestion made by the accused. In fact, in place of Rs.5600/- to be deposited in advance, there is an advance of Rs.5600/- duly recorded in the cash book and this entry is to be found in Art. 8 at page 112.

12. The extra money thus having been explained in this manner and further boldly accepted by the accused that they were charging Rs.2/- for supply of the form and work of filling up the form for and on behalf of the driver, who may either be illiterate or may not have come with a form duly filled in, in my opinion, it would render the prosecution case of corruption totally baseless.

13. In absence of said driver Firoz, the direct evidence that could have been led in this matter both from the point of view of the prosecution as well as from the point of view of the defence is not before the Court. He was the only person, who could have explained and given statement as to what really transpired. It may have led to conviction of the accused without in any manner of doubt, or it may have exonerated them honourably. In his absence what remains on record is the deposition of the panch witness, who, on the material particulars is not able to recollect anything. Shri Yadav, the I.O. is able to say only about the things for which there is no dispute at all.

14. In this background, if the explanation of amount having received by way of remuneration for rendering extra services is considered, it is the case where defence is definitely probabalised and it being a plausible explanation for the fact of extra money, it is quite clear that the case of the prosecution against the

accused is not borne out.

15. Incidentally, before concluding, it may be mentioned that in the New Act in Sub-Sec.3 of Sec.20, the Legislature in its wisdom has provided that the Court may decline to draw a presumption referred to in Sec.20(2)(1) if the grantification or thing stated in those 2 sub-sections in the opinion of the Court is so trivial that no inference of corruption may fairly be drawn.

16. In the instant case, the defence has probabalised its version of extra money in for of said remuneration. Leaving it aside, so far as the prosecution is concenred, it has not been able to establish that the extra money was by way of bribe as alleged in the prosecution case. Viewed either way, therefore, the appeals must succeed and the order of conviction be set aside. The appeals are allowed. The order of conviction and sentence is set aside. The accused are acquitted of the charges levelled against them. Fine, if paid, is ordered to be refunded. Bail bonds stand cancelled.
